

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RICHARD ROGERS, individually and on
behalf of similarly situated individuals,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a Delaware
corporation,

Defendant.

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No. 2019-cv-03083

Hon. Matthew F. Kennelly

DECLARATION OF JON LOEVY

I, Jon Loevy, hereby aver, pursuant to 28 U.S.C. § 1746, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the state of Illinois. I am the founding partner of Loevy & Loevy. I am licensed to practice law in the state of Illinois, and I, along with Michael I. Kanovitz am one of the attorneys representing Plaintiff Richard Rogers and the certified class in this matter alongside Myles McGuire, Evan M. Meyers, David L. Gerbie, and Brendan Duffner of McGuire Law, P.C. (together, “Proposed Class Counsel.”) I am fully competent to make this Declaration and do so in support of Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement.¹

2. Loevy & Loevy is a plaintiff’s firm that handles civil rights, class action, freedom of information act, and qui tam litigation cases throughout the United States. Our firm has won dozens of jury trials and has secured hundreds of millions of dollars for our clients. The attorneys

¹ Unless otherwise defined, capitalized terms used herein have the same meaning given to them as in the Parties’ Settlement Agreement

at Loevy & Loevy, including myself, regularly handle complex litigation and have extensive experience in class action lawsuits similar in size and complexity to the instant case, including BIPA class actions. Loevy attorneys and their firms have been appointed as class counsel in class actions in state and federal courts across the country. Our firm resume is attached as Exhibit A.

3. I received my B.A. from the University of Michigan and graduated Columbia Law School in 1993. After graduating from law school, I clerked for Judge Milton I. Shadur of the Northern District of Illinois. I focus my practice on a wide variety of civil rights issues including wrongful convictions, police shootings, excessive force, prisoner rights, the First Amendment, freedom of information, electronic privacy, government fraud and whistleblower protection, environmental justice, and other constitutional claims. I have won jury verdicts of at least a million dollars at more than 20 separate jury trials, nearly all in cases involving extremely challenging fact patterns. More than a dozen of my jury verdicts exceeded \$5 million, and I have won jury verdicts of at least \$20 million six separate times.

4. Michael I. Kanovitz is the co-Managing Partner of Loevy & Loevy. He graduated *cum laude* from both Brandeis University and the Cornell Law School. Mr. Kanovitz concentrates his practice on class actions, constitutional law, and whistleblower protection under the federal and state False Claims Acts. His cases have resulted in verdicts and settlements of over \$125 million to his clients. On the national scene, Mr. Kanovitz recently handled several cases brought by whistleblowers against former Secretary of Defense Donald Rumsfeld. In *Vance et al. v. Rumsfeld*, Mr. Kanovitz is lead counsel for two whistleblowers who were detained and tortured by U.S. officials after they reported on contractor corruption in the Iraq war. In *Doe v. Rumsfeld*, Mr. Kanovitz is working with the Government Accountability Project (GAP), a whistleblower advocacy organization in Washington, D.C., on a case involving an American contractor who was

held incommunicado for over nine months. Both cases are the only ones of their type to have survived a motion to dismiss by Mr. Rumsfeld. Experts in constitutional law and legal educators have described these cases as groundbreaking. Mr. Kanovitz was recently recognized for his outstanding litigation and trial skills in the Law Bulletin's 40-under-40 attorneys to watch.

5. The extensive procedural history of this Litigation is accurately reflected in Section II(B) of Plaintiff's Motion for Preliminary Approval. In Summer 2023, Loevy & Loevy was retained as trial counsel in connection with the Federal Case and to assist with resolving the Litigation as a whole.

6. On September 8, 2023, just prior to the retrial in the Federal Case scheduled for October 2, 2023 and the State Court oral argument and ruling on Plaintiff's Motion for Class Certification and Defendant's Motion for Judgment on the Pleadings, then scheduled to occur on September 29, 2023, Judge Kennelly held a court-mediated settlement conference in an attempt to resolve the Litigation, which ultimately led to the settlement.

7. Following this settlement conference, and over the ensuing months, the Parties engaged in further confirmatory discovery and extensive negotiations regarding the contours of the settlement agreement and attendant documents, including among other things the relief provided to the class members, the details of the Class Notice, and the scope of the release before executing the Settlement Agreement submitted herewith to this Court.

8. Proposed Class Counsel have concluded that the Settlement Agreement reached in this matter is fair, reasonable and adequate in light of the attendant risks of protracted litigation. While I believe that the merit of Plaintiff's claims could and would ultimately be proven, I recognize the considerable risk and inherent uncertainty that continued litigation imposes on Plaintiff and the absent class members, especially given the numerous issues of first impression

that bear upon BIPA cases and many of Defendant's defenses. Based on the investigation, discovery, extensive motion practice, and trial that has occurred in the Litigation, together with years of experience prosecuting class actions in courts throughout the nation, including numerous BIPA class actions, I believe that the settlement reached in this matter is in the best interests of Plaintiff and the Settlement Class Members.

9. I and the other Proposed Class Counsel have diligently investigated the facts and claims in this matter and have dedicated substantial resources to this matter. Loevy & Loevy has expended significant resources on diligently prosecuting this action. Among other things, Loevy & Loevy has: (i) investigated the nature of the biometrically-enabled automatic gate systems utilized by Defendant; (ii) evaluated the facts giving rise to the claims asserted by Plaintiff, including potential defenses thereto; (iii) deposed third-party individuals with knowledge related to Plaintiff's claims; (iv) conducted numerous meet-and-confers regarding trial in the Federal Case; (v); briefed and argued the Parties' pretrial motions; (vi) prepared for and conducted the trial in the Federal Case; (vii); briefed and argued the Parties' post-trial motions; (viii) briefed Defendant's Motion for Judgment on the Pleadings; (ix) participated in multiple rounds of arm's-length negotiations; and (x) reviewed the final executed Settlement Agreement and related documents, and participated in communications and negotiations involving, *inter alia*, the claims administration process, the scope of release, and the compensation provided to the Settlement Class Members. I believe the settlement reached in this matter is fair and in the best interests of the Settlement Class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 25, 2024 in Chicago, Illinois.

/s/ Jon Loevy
Jon Loevy, Esq.

Exhibit A

LOEVY & LOEVY FIRM RESUME

Loevy & Loevy is a Plaintiff's firm that handles civil rights, class action, freedom of information act, and qui tam litigation cases throughout the United States. Our firm has won dozens of jury trials and has secured hundreds of millions of dollars for our clients.

In 2012, the Honorable Matthew Kennelly stated that Loevy & Loevy "is fairly considered one of the premier Chicago-area law firms concentrating in plaintiff's section 1983 litigation" and also noted that founding partner Jon Loevy and the firm "consistently produce written work that rivals that of any law firm in Chicago—not just those specializing in this particular field." *Jimenez v. City of Chicago*, Case No. 09 C 8081, 2012 WL 5512266, at *2.

Loevy & Loevy has secured many of the nation's top jury verdicts for its wrongfully convicted clients, including \$22 million in *Fields v. City of Chicago*, Case No. 10-cv-1168 (N.D. Ill.); \$21 million in *Johnson v. Guevara*, Case No. 05-cv-1042 (N.D. Ill.); \$16 million in *White v. McKinley*, Case No. 05-cv-203 (W.D. Mo.); and \$9 million in *Dominguez v. Hendley*, Case No. 04-cv-2907 (N.D. Ill.).

Most of our firm's attorneys graduated from highly competitive law schools, clerked for federal or state judges, and left or turned down jobs at the nation's largest law firms to work at Loevy & Loevy. Among other awards, a number of the firm's attorneys have been recognized as Super Lawyers, Rising Stars, and as some of Chicago's 40 under 40 attorneys to watch.

Our cases regularly receive attention from local and national media, and our results have been reported in the Chicago Tribune, the Chicago Sun Times, the New York Times, and The Wall Street Journal.

CLASS ACTION PRACTICE

We are experienced class action attorneys who have tried two class actions to verdict and have successfully litigated a number of class action cases – efforts that multiple courts have recognized. For example, in *Young v. County of Cook*, Case No. 06-cv-552 (N.D. Ill.), and a related case against Cook County's former insurers, our firm secured \$107 million in settlements after winning a trial on liability and multiple damages trials in the original case and another trial in the case against the insurance companies for improperly denying coverage. And in granting final approval of a \$7.2 million settlement in the case of *Flood v. Dominguez*, Case No. 08-cv-153 (N.D. Ind.), on December 14, 2012, the Honorable Philip P. Simon stated that "class counsel [from Loevy & Loevy]...are highly experienced, highly respected and have done an outstanding job in the face of a very strong opposition." Our class actions include:

Marconi v. City of Joliet, Case No. 10-MR-0165 (Circuit of Will County, Ill.): Loevy & Loevy was Class Counsel for retired Joliet employees who alleged that Joliet violated collective bargaining agreements and the Illinois Constitution by increasing the price of City-provided retiree healthcare benefits. The case settled for \$702,139.99, plus valuable injunctive relief for the Class in the form of an agreement regarding the cost of benefits going forward.

Aranda v. Caribbean Cruise Line, et al., Case No. 12-cv-4096 (N.D. Ill.): Co-class counsel in TCPA case, securing \$56-\$76 million settlement for the class. At the \$76 million level, it will be the largest TCPA settlement ever. In awarding attorneys' fees following the settlement, the court recognized Loevy & "Loevy's expertise in conducting class action trials," and noted "that counsel provided exceptional representation for the class and produced high-value output." *Aranda v. Caribbean Cruise Line, Inc.*, 12 C 4069, 2017 WL 1369741, at *3 (N.D. Ill. Apr. 10, 2017).

Dunn v. City of Chicago, Case No. 04-cv-6804 (N.D. Ill.): Class counsel in an action concerning the unconstitutional treatment of inmates held in lockup by the Chicago Police Department, which resulted in a \$16.5 million settlement.

Flood v. Dominguez, Case No. 08-cv-153 (N.D. Ind.): Class counsel in an action concerning the unconstitutional treatment of inmates held in lockup at the Lake County Jail, which resulted in a \$7.2 million settlement.

Solon v. Midwest Medical Records Association, et al., Case No. 04-CH-7119 (Circuit Court of Cook County Ill.). After securing adversarial class certification in this consumer class action and litigating the case all the way to the Illinois Supreme Court, Loevy & Loevy negotiated a settlement that allowed class members to recoup 70% of their damages.

Throgmorton et al. v. Reynolds et al., Case No. 12 CV 3087 (C.D. Ill.): Loevy & Loevy tried this certified class action to verdict, seeking damages and injunctive relief on behalf of inmates subjected to an unconstitutional strip search at Lincoln Correctional Center. The case is on appeal.

Young v. County of Cook, Case No. 06-cv-552 (N.D. Ill.): Class counsel in an action concerning the unconstitutional strip searching of inmates at the Cook County Jail, which resulted in settlements of more than \$100 million following the entry of partial summary judgment and trial on liability for the class members, as well as multiple successful damages trials, and follow-on litigation against the County's former insurers (*Cook County v. AIG, Inc.*, described in the below section). See *Young v. County of Cook*, 06 C 552, 2017 WL 4164238, at *1, 3 (N.D. Ill. Sept. 20, 2017) (noting that cases resulted in \$107 million of settlements and that "the quality of counsel's performance [was] exceptional").

REPRESENTATIVE JURY AWARDS AND SETTLEMENTS:

In addition to its class action practice described above, Loevy & Loevy (either as sole counsel or with co-counsel) has secured hundreds of millions of dollars in jury awards and settlements covering various substantive areas of the law, including the following:

Jacques Rivera v. Reynaldo Guevara, et al., Case No. 12 C 4428 (N.D. Ill.): In 2018, Loevy & Loevy obtained a \$17 million jury verdict for Jacques Rivera, who was wrongly convicted of a murder he did not commit and spent 21 years in prison as a result. Rivera was framed by Chicago Police officer Reynaldo Guevara, who is responsible for the wrongful convictions of more than 18 men. The jury also awarded \$175,000 in punitive damages against three police officers involved in the case.

Anthony Kuri (a.k.a. Ramsey Qurash) v. City of Chicago et al., Case No. 1:13-cv-1653 (N.D. Ill.): In 2018, Loevy & Loevy obtained a \$4 million jury verdict for a man who was wrongfully arrested based on fabricated evidence and spent three years in Cook County Jail awaiting trial for murder. The jury also awarded punitive damages in the total amount of \$50,000 against two individual Defendant Officers.

Cook County v. USI, Case No. 2012-L-008066 (Cir. Ct. Cook Cnty. Ill.): In March 2018, Loevy & Loevy tried this breach of contract case with co-counsel, resulting in a \$9,050,000 verdict.

Burgess v. Baltimore Police Department, et al., Case No. 1:15-cv-00834-RDB (D. Md.): In 2017, Loevy & Loevy won a \$15 million verdict for a man who spent nearly twenty years in prison after being wrongfully convicted of a murder he did not commit.

Doe v. County of Milwaukee, Case No. 2:14-cv-00200 (E.D. Wisc.) (captioned as *Martin v. County of Milwaukee* at trial): In 2017, Loevy & Loevy won a \$6.7 million verdict on behalf of a woman who had been sexually assaulted by a correctional officer in the Milwaukee County Jail, including a jury finding that the officer had been acting within the scope of his employment and therefore that the County was required to pay the verdict entered against the officer.

Fields v. City of Chicago, Case No. 10-cv-1168 (N.D. Ill.): In 2016, Loevy & Loevy served as lead trial counsel in wrongful conviction case that resulted in a \$22 million verdict for the Plaintiff, including a verdict against the City of Chicago for unconstitutional practices.

Cook County v. AIG, Inc., 12 L 2675 (Cir. Ct. Cook Cnty. Ill.): In 2016, Loevy & Loevy obtained a jury verdict on behalf of Cook County in a case alleging that American International Group, Inc. and various subsidiaries defrauded the County out of insurance proceeds from policies that AIG sold the County. The jury awarded \$20 million on each of the following claims against an AIG-related entity: Illinois

False Claims Act (subject to trebling); common law fraud; and fraudulent concealment. The jury also awarded \$20 million in punitive damages.

United States ex. rel. Cieszynski v. LifeWatch Services, Inc., Case No. 13-cv-4052 (N.D. Ill.): In 2016, Loevy & Loevy secured a settlement of \$12,975,000 in this declined False Claims Act case accusing LifeWatch Services, Inc. of defrauding government insurance programs.

Sanders v. City of Chicago Heights, Case No. 13-cv-0221 (N.D. Ill.): In 2016, Loevy & Loevy secured a \$15 million settlement for an individual who spent 20 years in prison after being wrongfully convicted of murder.

Holmes v. Garrett, Case No. 12-cv-2333 (E.D. Mo.): In 2016, we secured a \$2.5 million verdict for a client who was wrongfully convicted for drug possession and spent 5 years in prison as a result. We were brought in to serve as trial counsel after discovery was completed.

Estate of Keith MacNeice Jr. v. City of Chicago, Case No. 2009 L 2962 (Cook County Cir. Ct. Ill.): In 2015, we won a \$2.75 million jury verdict on behalf of a young man who was killed during an unauthorized and unlawful high-speed police chase.

Rivera v. City of Waukegan, Case No. 12-cv-08665 (N.D. Ill.): In 2015, Loevy & Loevy secured a \$20 million settlement for a client who spent 20 years in prison after being wrongfully convicted of rape and murder. This is believed to be the largest wrongful conviction settlement for an individual plaintiff.

United States ex rel. Keiser v. McHugh, Case No. 08-02443 (N.D. Ill.): Loevy & Loevy served as relator's counsel in this False Claims Act case, which resulted in a \$12 million settlement.

Harden v. Kachiroubas, Case No. 12 CV 8316 (N.D. Ill.): In 2014, Loevy & Loevy participated in a \$40 million settlement with the Illinois State Police on behalf of the "Dixmoor Five," a group of five young men who were wrongfully convicted of the sexual assault and murder of a teenage girl. James Harden, Loevy & Loevy's client, was among the plaintiffs in the case. He and the rest of the Dixmoor Five also settled their claims against the Village of Dixmoor for an additional undisclosed sum. The Dixmoor Five case remains the largest settlement of a wrongful conviction case in the history of Illinois.

Gillard v. City of Chicago, Case No. 10 CV 7606 (N.D. Ill.): In 2014, Loevy & Loevy reached a \$6.375 million settlement with the City of Chicago for client Larry Gillard, who spent 12 years in prison for a rape he did not commit.

Ayers v. City of Cleveland, No. 12 C 753 (N.D. Ohio): In 2013, Loevy & Loevy secured a \$13,210,000 verdict on behalf of a wrongfully convicted client against two Cleveland police officers, which is believed to be the highest civil rights judgment ever entered against Cleveland police officers.

Fox v. Barnes, Case No. 09-cv-05453 (N.D. Ill.): In January 2013, we won a \$12 million verdict on behalf of a former Illinois Department of Corrections inmate who suffered brain damage after being denied proper medical care.

Jimenez v. City of Chicago, Case No. 09-cv-8081 (N.D. Ill.): In January 2012, we won a \$25 million jury verdict for a client who spent 16.5 years in prison after being wrongfully convicted. A report published in the National Law Journal lists this verdict as being one of the top 100 verdicts of 2012.

Sandra T.E. v. Sperlik, Case No. 05-cv-473 (N.D. Ill.): In July 2010, a jury awarded \$3.6 million to Loevy & Loevy's clients who had been sexually abused by a band teacher in Berwyn, Illinois.

Johnson v. Guevara, Case No. 05-cv-1042 (N.D. Ill.): In June 2009, we won a \$21 million jury verdict for our client in federal court in Chicago. The client had spent nearly 12 years wrongfully imprisoned for a murder he did not commit. The jury concluded that a Chicago Police Department detective violated the client's constitutional rights by causing his wrongful conviction.

Borsellino v. Putnam, Case No. 00-CH-13958 (Cir. Ct. Cook Cnty. Ill.): We won an \$11 million jury verdict on behalf of a client who alleged that his former business partners had defrauded him in connection with the sale of their business.

White v. McKinley, Case No. 05-cv-203 (W.D. Mo.): In August 2008, we won a \$16 million jury verdict for our client who had been wrongfully convicted and served more than five years in prison.

Ware v. City of Chicago, Case No. 04-cv-2612 (N.D. Ill.): In February 2007, we won a jury verdict for our client who was shot and killed by the Chicago Police following a car chase. Following the jury's verdict, the City agreed to pay \$5 million to resolve the case.

Coffie v. City of Chicago, Case No. 05-cv-6745 (N.D. Ill.): In October 2007, we won a \$4 million jury verdict for our client in federal court in Chicago. The client was in an automobile that was stopped by Chicago Police Officers, who then drove the client to an alley and during the course of a body search, jammed a screwdriver into the client's rectum.

Finwall v. City of Chicago, Case No. 04-cv-4663 (N.D. Ill.): In October 2007, we won a \$2 million jury verdict for our client in federal court in Chicago. The client was charged and prosecuted for the heinous crime of attempted child abduction, a crime of which he is completely innocent. The jury concluded that the Chicago Police Department detectives violated the client's rights by maliciously prosecuting him for a crime he did not commit.

Dominguez v. Hendley, Case No. 04-cv-2907 (N.D. Ill.): In October 2006, we won a \$9 million jury verdict for our client, a Mexican immigrant who spent four years in prison as a teenager after being wrongfully convicted.

Waits v. City of Chicago, Case No. 04-cv-4010 (N.D. Ill.): In 2002, Loevy & Loevy won a \$2.015 million jury verdict on behalf of a client who was beaten and retaliated against by police officers after he squirted a Chicago Police officer with a water bottle.

Regalado v. City of Chicago, Case No. 96-cv-1736 (N.D. Ill.): In 1999, Loevy & Loevy secured a \$28 million jury verdict against the City of Chicago in a police brutality case where our client was beaten into a coma by two Chicago Police Officers. That award is the largest police brutality jury verdict in the history of the City, and is believed to be the highest tort verdict against Chicago as well.

Grayson v. The City of Aurora, et al., Case No. 13-cv-017705 (N.D. Ill.): In 2016, Loevy & Loevy secured a settlement in the amount of \$3 million for a man-- a teenager at the time of his arrest-- who was wrongfully convicted of murder and spent more than 11 years innocently incarcerated.

Wanda Colon, As Administrator of the Estate of Cesar Munive, deceased, v. Town of Cicero and Donald Garrity, Case No. 12-cv-5481 (N.D. Ill.): In 2017, Loevy & Loevy secured a settlement of \$3.5 million for the death of a man shot by a Cicero police officer. It was also successfully alleged that the Defendant Town of Cicero was negligent in hiring the officer who fatally shot our client's son, and that the officer should not have been on the force at the time of the shooting.

Kerry Porter v. Louisville Jefferson County Metro Government et al., Case No. 3:12-cv-829-S (W.D. KY.): In 2018, Loevy & Loevy secured a settlement in the amount of \$7.5 million for a man wrongfully convicted of murder and who spent 14 years incarcerated until his release.

McCann v. Fuller et al., Case No. 19-cv-1032 (W.D. Mic.), won a \$14.5 million dollar jury verdict on behalf of a client convicted of trumped-up perjury charges.

Gray v. City of Chicago et al., Case No. 18-cv-2624 (N.D. Ill.), won a \$27 million dollar jury verdict on behalf of a client – a teenager at the time of his arrest – who was wrongfully convicted of murder and spent more than 24 years innocently incarcerated.

Gillispie v. Miami Township et al., Case No. 13-cv-416 (N.D. Ohi.), won a \$45 million dollar jury verdict on behalf a client who spent 20 years wrongfully convicted of rape.